

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4
5 MARIO BANDA-ALICEA,

6 Plaintiff,

7 vs.

8 CORRECTIONS CORPORATION OF
AMERICA, *et al.*,

9 Defendants.
10

2:14-cv-01437-GMN-VCF

ORDER

11 This matter involves incarcerated *pro se* Plaintiff Mario Banda-Alicea's civil rights action
12 against Corrections Corporation of America, Charlotte Collins, M. Sedgwick, S. Connors, and Jim
13 Chism. Before this court is Plaintiff's Motion for Appointment of Counsel. (#7). For the reasons stated
14 below, Plaintiff Banda-Alicea's Motion is denied with leave to renew.

15 **BACKGROUND**

16 Plaintiff filed a Complaint against multiple defendants and Motion for Leave to Proceed *in forma*
17 *pauperis* for events that took place while he was incarcerated at the Nevada Southern Detention Center
18 ("NSDC"). (#1). Plaintiff alleged two counts and sought declaratory relief, injunctive relief, and
19 monetary damages. (#1). In its Screening Order (#3), the court dismissed Plaintiff's Due Process Claim
20 based on the NSDC's and U.S. Marshal's Service policy that limits certain high risk detainees from
21 participating in the volunteer work program, because the policy serves a legitimate purpose by ensuring
22 the security of the facility. The court allowed Plaintiff's Equal Protection Clause claim regarding how
23 the NSDC applies the policy to pretrial detainees to proceed. (#3). The court found that based on the
24 Plaintiff's allegations, the NSDC allows pretrial detainees with detainers for pending charges with other
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1 agencies to work even though the U.S. Marshal's policy forbids that. (#3). This policy would create a
2 situation where similarly situated detainees face disparate treatment without a rational basis for the
3 distinction. (#3).

4 Following the Order, Plaintiff filed a Motion for Appointment of Counsel. (#7). The Motion
5 states that the Plaintiff is unable to afford counsel, has tried to secure his own counsel and failed, has
6 limited law experience, and has a case containing complex issues. Attached to the Motion is a
7 Declaration in Support that covers the same basic assertions. There is also a Memorandum of Law
8 attached to the Motion. Unfortunately, it appears to be cut off after the first page, because it ends mid-
9 sentence. The Motion, Declaration, and Memorandum add nothing to the facts of the case. The
10 Memorandum begins to cite to a legal standard for appointing counsel for an indigent litigant, but the
11 Memorandum ends before the citation is given. The persuasive or mandatory authority of this statement
12 is unclear, and brief research into the matter does not show an instance where a 9th Circuit or Nevada
13 District Court has used the legal standard quoted.
14

15 **LEGAL STADARD**

16 There is no constitutional right to appointed counsel in a federal civil rights action. *See, e.g.,*
17 *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *op. reinstated in pertinent part*, 154 F.3d 952,
18 954 n. 1 (9th Cir. 1998) (en banc). Under 28 U.S.C. § 1915(e)(1), the district court may request that an
19 attorney represent an indigent civil litigant. *See, e.g., Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th
20 Cir.1986); 28 U.S.C. § 1915(e)(1) ("The court may request an attorney to represent any person unable to
21 afford counsel.").

22 While the decision to request counsel is a matter that lies within the discretion of the district
23 court, the court may exercise this discretion to request or "appoint" counsel only under "exceptional
24 circumstances." *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir.1991). "A finding of exceptional
25

1 circumstances requires an evaluation of both the likelihood of success on the merits and the ability of the
2 petitioner to articulate his claims *pro se* in light of the complexity of the issues involved. Neither of
3 these factors is dispositive and both must be viewed together before reaching a decision.” *Id.*

4 DISCUSSION

5 In its current form, Banda-Alicea’s Motion fails to satisfy this high standard. While his claim for
6 violations of the Equal Protection Clause survived the screening process, the standard is much lower in
7 that proceeding. The purpose of screening is to dismiss frivolous and malicious claims or claims that fail
8 to state a claim upon which relief may be granted. 28 U.S.C. § 1915A(b)(1),(2). In reviewing a motion
9 to appoint counsel in this matter, the court must evaluate the likelihood of success of the Plaintiff’s
10 claims. *Terrell*, 935 F.2d at 101. It is Plaintiff’s burden to demonstrate the likelihood of success. *Rand*,
11 113 F.3d at 1525. Plaintiff’s Motion for Appointment of Counsel made no arguments regarding the
12 likelihood of his success. (#7). While the memorandum could have discussed this issue, the version
13 submitted to the court is incomplete¹. This has prevented the court from evaluating the merits of
14 Plaintiff’s requests. Therefore, Plaintiff is granted leave to renew his Motion with the complete
15 Memorandum attachment. The court will evaluate Plaintiff’s request for the appointment of counsel at
16 that time.

17 ACCORDINGLY, and for good cause shown,

18 IT IS ORDERED that Banda-Alicea’s Motion for Appointment of Counsel (#7) is DENIED with
19 leave to renew.

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25 ¹ A copy of the Motion to Appoint Counsel (#7) as it appears on the court docket is attached to this Order as Exhibit A.

1 IT IS FURTHER ORDERED that Plaintiff's renewed Motion must be filed by February 13,
2 2015.

3 IT IS SO ORDERED.

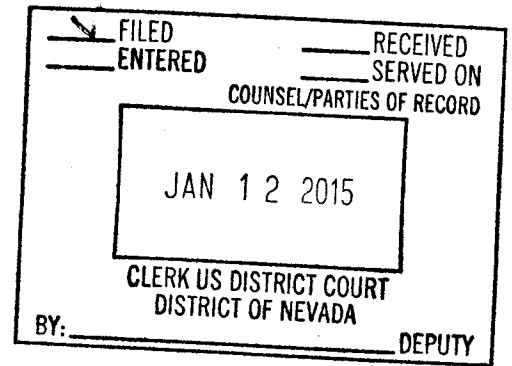
4 DATED this 22nd day of January, 2015.

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7 CAM FERENBACH
8 UNITED STATES MAGISTRATE JUDGE
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EXHIBIT A

Mario Banda - Alicea, pro se
Reg. No. 37772-048
Federal Correctional Institution
37910 North 45th Ave
Phoenix, Arizona 85086



**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

Mario Banda - Alicea,)
Plaintiff,) Case No.2:14-CV-01437-GMN
v.)
) MOTION TO APPOINT COUNSEL
Corrections Corporation of)
America et al.,)

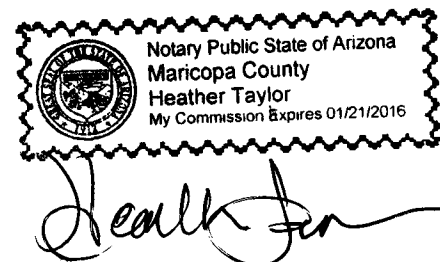
Plaintiff, Mario Banda - Alicia, pursuant to § 1915,
requests this Court to appoint counsel to represent him in
this case for the following reasons:

1. The plaintiff is unable to afford counsel.
2. The issues involved in this case are complex.
3. The plaintiff has extremely limited law experience.
4. The plaintiff has attempted to secure counsel on his own
in the State of ~~Arizona~~ and of Nevada. He has received no
responses on these attempts.

WHEREFORE, this Honorable Court should appoint counsel to
represent the plaintiff.

Respectfully Submitted,


Mario Banda Alicia
1-7-15
Date



Mario Banda - Alicea, pro se
Reg. No. 37772-048
Federal Correctional Institution
37910 North 45th Ave
Phoenix, Arizona 85086

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

Mario Banda - Alicea)	
Plaintiff,)	Case No.2:14 CV-01437 GMN
v.)	
)	DECLARATION IN SUPPORT OF
Corrections Corporation of)	PLAINTIFF'S MOTION TO
America et al.,)	APPOINT COUNSEL

MARIO BANDA ALICEA states

1. I am the plaintiff in the above entitled case. I make this declaration in support of my motion for this appointment of counsel.

2 The complaint in this case alleges that the plaintiff was discriminated against in violation of his civil rights.

3. This is a complex case because it contains several different legal claims, with the claim involving different sets of defendants

4. The plaintiff has demanded a jury trial

5. The case will require discovery of documents and possible depositions of a number of witnesses

6. The testimony will be in sharp contrast due to the plaintiff's allegations that defendants discriminated against

him, while defendants, in their response to administrative remedies assert they did not.


7 The plaintiff has only a high school education with no legal or formal background in law.

8. The plaintiff is serving a sentence of imprisonment in a Federal Correctional Institution and there is no legal aid available at this institution.

10. As set forth in the Memorandum of Law submitted with this motion, these facts, along with the legal merit of plaintiff's claims, support the appointment of counsel to represent the plaintiff.

WHEREFORE, the plaintiff's motion for appointment of counsel should be granted. Pursuant to 28 U.S.C. 1746 I do declare that the foregoing is true and correct under the penalty of perjury.

Respectfully Submitted,


Mario Banda - Alicea

1-7-15

Date





Mario Banda - Alicea pro se
Reg. No. 37772-048
Federal Correctional Institution
37910 North 45th Ave
Phoenix, Arizona 85086

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

Mario Banda - Alicea,)	
Plaintiff,)	Case No.2.14-CV-01437-GMN
v.)	
)	MEMORANDUM OF LAW IN SUPPORT
Corrections Corporation of)	OF PLAINTIFF'S MOTION TO
America et al.,)	APPOINT COUNSEL

STATEMENT OF CASE

This is a civil rights case filed under 42 U.S.C. 1983 by a Federal Prisoner

STATEMENT OF FACTS

The pertinent Statement of Facts are located in the initial filing and are only briefly summarized here.

ARGUMENT

THE COURT SHOULD APPOINT COUNSEL FOR THE PLAINTIFF

In deciding whether to appoint counsel for an indigent litigant, the court should consider "the factual complexity of the case, the ability of the indigent to investigate the facts, the existence of conflicting testimony, the ability of the indigent to present his claim and the complexity of

Confirmation of Receipt of Monies

Received By: RODRIGUEZ, [REDACTED]

Date: 6/10/2014

Time: 09:49:22

Receipt #: 332521250

Booking#: 2755487

PCP#: 2095545

Agency ID/CID: 37772048

Name: BANDA-ALICEA, MARIO DAVID

SS#:

Section: G

Block: 3

Cell: 034

Bed: A

Date/Time	Code Type	Amount Check	Description DL#
06/10/2014 09:48	Withdrawal PO	-5.75	BENSON & BINGHAM

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your account by the close of the next business day.

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Inmate Signature Line

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Officer Signature Line

Confirmation of Receipt of Monies

Received By: RODRIGUEZ, [REDACTED]

Date: 6/10/2014

Time: 09:50:37

Receipt #: 332521314

Booking#: 2755487

PCP#: 2095545

Agency ID/CID: 37772048

Name: BANDA-ALICEA, MARIO DAVID

SS#:

Section: G

Block: 3

Cell: 034

Bed: A

Date/Time	Code Type	Amount Check	Description DL#
06/10/2014 09:50	Withdrawal PO	-5.75	ALLEN A CAP

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NEVADA SOUTHERN DETENTION CENTER

Confirmation of Receipt of Monies

Received By: RODRIGUEZ, [REDACTED]

Date: 6/10/2014

Time: 09:51:19

Receipt #: 332521334

Booking#: 2755487

PCP#: 2095545

Agency ID/CID: 37772048

Name: BANDA-ALICEA, MARIO DAVID

SS#:

Section: G

Block: 3

Cell: 034

Bed: A

Date/Time	Code Type	Amount Check	Description DL#
06/10/2014 09:50	Withdrawal PO	-5.75	CANDACE A CARLYON

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Officer Signature Line

Confirmation of Receipt of Monies

Received By: RODRIGUEZ, [REDACTED]
Date: 9/3/2014
Time: 10:43:08

Receipt #: 333308506

Booking#: 2755487

PCP#: 2095545

Agency ID/CID: 37772048

Name: BANDA-ALICEA, MARIO DAVID

SS#:

Section: G

Block: 3

Cell: 034

Bed: A

Date/Time	Code Type	Amount Check	Description DL#
09/03/2014 10:42	Withdrawal PO	-2.03	GARY PECK

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